

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

YITZCHOK LEBOVITS and
CHANA SHAPIRO-LEBOVITS, on
their own behalf and on behalf of their
daughters E.L., a minor, and A.L., a
minor; and
BAIS YAAKOV ATERES MIRIAM, a
New York religious corporation,

Plaintiffs,

v.

ANDREW M. CUOMO, individually
and in his official capacity as Governor
of the State of New York;
BILL DE BLASIO, individually and in
his official capacity as Mayor of the City
of New York;
LETITIA JAMES, in her official capac-
ity as Attorney General of the State of
New York;
HOWARD A. ZUCKER, in his official
capacity as Commissioner of the New
York State Department of Health;
CITY OF NEW YORK; and
NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE,

Defendants.

Civil No. 1:20-cv-01284-GLS-DJS
Hon. Gary L. Sharpe

**NOTICE OF
SUPPLEMENTAL AUTHORITY**

Plaintiffs submit this notice of supplemental authority as relevant to the pending motions to dismiss. ECF 52 (State Defendants); ECF 51 (City Defendants).

In its March 8 decision in *Uzuegbunam v. Preczewski*, the Supreme Court held that “an award of nominal damages by itself can redress a past injury.” No. 19-968, 2021 WL 850106 at *2 (Mar. 8, 2021). There the defendants, a Georgia state college and its officials, restricted the plaintiff’s speech about his religious beliefs. *See id.* at *2-3. After the plaintiff sued, the college initially defended its policy, but then “quickly

abandoned that strategy,” changed its unconstitutional policy, and moved to dismiss as moot. *Id.* at *3. The lower courts ruled that the case was moot, but the Supreme Court reversed. The Court held that the case was not moot because the plaintiff had raised a nominal damages claim for the already-completed constitutional violation. *Id.* at *7.

Under *Uzuegbunam*, Plaintiffs’ nominal damages claims defeat Defendants’ mootness defense. Plaintiffs have alleged both compensatory and nominal damages. ECF 1 (Complaint) at ¶¶ 10, 152, 160, 170, 178, 185, 193, 201 & Prayer for Relief (c) and (d). Plaintiffs have also alleged that Defendants’ decision to place Bais Yaakov Ateres Miriam in a red zone and order it to remain closed from October 8 until October 21 (five days after this lawsuit was filed) worked an already-completed injury. ECF 55 at 6-7, 23-24. *Uzuegbunam* confirms that Plaintiffs’ claims for damages from this “past injury” remain live regardless of subsequent policy changes. *Uzuegbunam*, 2021 WL 850106 at *2. Thus, even if Plaintiffs’ claims for injunctive and declaratory relief were no longer justiciable—and they are, *see* ECF 55 at 12-23—this case still wouldn’t be moot.

Dated: March 10, 2021

Respectfully submitted,

s/ Mark. L. Rienzi

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